

Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

NO. 16-3440

CLARENCE F. FOSTER,

PETITIONER,

V.

ROBERT A. McDONALD,
SECRETARY OF VETERANS AFFAIRS,

RESPONDENT.

Before PIETSCH, *Judge*.

ORDER

*Note: Pursuant to U.S. Vet. App. R. 30(a),
this action may not be cited as precedent.*

On October 12, 2016, Clarence F. Foster filed through counsel a petition for extraordinary relief in the nature of a writ of mandamus. In his petition, Mr. Foster asks the Court to compel the Secretary to issue a decision on his September 2014 motion for revision based on clear and unmistakable error (CUE) of a July 16, 1954, regional office (RO) decision denying entitlement to VA benefits for epilepsy. He states that the RO acknowledged his CUE motion, but informed him that it "closed" the matter because he also has a pending request to reopen the same July 1954 RO decision. Petition at 6. Mr. Foster argues that the RO was not permitted to close his CUE motion on that basis and that, based on the RO's refusal to adjudicate his CUE motion, he lacks alternative means to obtain a decision.

This Court has the authority to issue extraordinary writs in aid of its jurisdiction pursuant to the All Writs Act, 28 U.S.C. § 1651(a). Before the Court may issue a writ, three conditions must be satisfied: (1) the petitioner must demonstrate that he lacks adequate alternative means to obtain the desired relief, thus ensuring that the writ is not used as a substitute for the appeals process; (2) the petitioner must demonstrate a clear and indisputable right to the writ; and (3) the Court must be convinced, given the circumstances, that the issuance of the writ is warranted. *See Cheney v. U.S. Dist. Court*, 542 U.S. 367, 380-81 (2004).

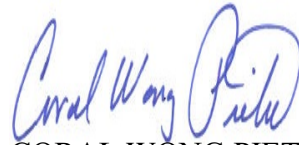
Based on the facts in Mr. Foster's petition, the Court cannot determine whether issuance of a writ of mandamus is justified in this case. Therefore, the Court will order the Secretary to respond to the arguments contained in the petition. The Secretary should also provide the Court with any other information that he feels would help resolve this matter.

Upon consideration of the foregoing, it is

ORDERED that the Secretary respond to this petition not later than 21 days after the date of this order.

DATED: October 26, 2016

BY THE COURT:

A handwritten signature in blue ink, appearing to read "Coral Wong Pietsch", is written over the printed name.

CORAL WONG PIETSCH
Judge

Copies to:

Sandra E. Booth, Esq.

VA General Counsel (027)